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PATENT
Docket No.: 019680-007800US

TOWNSEND and TOWNSEND and CREW LLP

By: 
Lukas K. Szymanski

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Qiming ZHU

Application No.: 10/726,812

Filed: December 2, 2003

For: Universal Raid Class Driver

Customer No.: 23050

Confirmation No.: 4116

Examiner: Shane M. Thomas

Art Unit: 2186

**REQUEST FOR RECONSIDERATION
OF PATENT TERM ADJUSTMENT
DETERMINATION
UNDER 37 C.F.R. § 1.705(b)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.705(b), Applicants respectfully request reconsideration of the patent term adjustment determination. This request is accompanied by the fee set forth in §1.18(e) and a statement of facts as required under 37 C.F.R. § 1.705(b)(2).

In view of the following it is respectfully requested that Applicants be granted a minimum patent term adjustment of **437 days**, with an additional term to be added if the patent issues after September 22, 2009 (which is the Tuesday prior to 28 weeks after the mailing date of the Notice of Allowance).

Statement of Facts as required under 37 C.F.R. § 1.705(b)(2)

The correct patent term adjustment is 437 days, not 0 days as stated on the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) mailed on March 13, 2009 with the Notice of Allowance.

The period of adjustment under § 1.702(a) is 392 days (“A delay”).

The period of adjustment under § 1.702(b) is to be determined when the instant application issues. The effective period of adjustment under 37 C.F.R. § 1.702(b) is 363 days (“B delay”).

The period adjustment under § 1.704(a) is 318 days (“applicant delay”).

The period of adjustment under § 1.703(f) is 437 days.

The Relevant Dates as Specified in 37 C.F.R. §§ 1.703(a)-(e) and the Adjustment Specified in 37 C.F.R. § 1.703(f)

1. § 1.703(a)

Applicants submit that the Office did not correctly calculate the term adjustments to include the term adjustments that Applicants are entitled under 37 CFR § 1.703(a)(1). **Exhibit A**, the Patent Term Adjustment History retrieved from private PAIR and attached hereto, contains the “08-28-2008 Mail Notice of Restarted Response Period”. The Office incorrectly determined the end-point of the period of adjustment under § 1.702(a)(1) to be May 12, 2008, not August 28, 2008.

The attached **Exhibit B**, the Office Action mailed August 28, 2008, states on page 2 under “Detailed Action” that it replaces the previous Office Action and restarts the response date by 3 months from the date of the Supplemental Office Action. Therefore, the correct period of adjustment under § 1.703(a)(1) is 392 days. The relevant dates are shown below.

Filing Date	14-month Date	Date of 1 st Office Action	Days over 14 months (§ 1.703(a)(1))
December 2, 2003	February 2, 2005	December 2, 2005	303 days

Date of Applicant Reply	4-month Date	Date of mailed PTO Response	Days over 4months (§ 1.703(a)(3))
January 31, 2008	May 31, 2005	August 28, 2008	89 days

Applicants, however, respectfully request an additional period of adjustment equal to the number of days, if any, in the period beginning on the day after the date that is four months after the date on which the issue fee will be paid and all outstanding requirements are satisfied and ending on the date the patent issues. *See*, 35 U.S.C. §154(b)(1)(A)(iv), 37 C.F.R. § 1.702(a)(4) and § 1.703(a)(6).

2. § 1.703(b)

The Office failed to issue a patent within three years of the actual filing date of the above-referenced application. The period of adjustment under 37 C.F.R. § 1.702(b) begins on the day after the date that is three years from the filing date of the instant application, December 2, 2003, and ends on November 30, 2007, the date a Request for Continued Examination (RCE) in the above-identified U.S. Patent was filed with the U.S. Patent Office.

Thus, the effective period of adjustment under 37 C.F.R. § 1.702(b) is **437 days**, i.e., from December 2, 2003 to September 22, 2009 as shown in the table below.

Filing Date	3-year Date	Date of Request for Continued Examination (Stops B Time)	Estimated days over 3 years through Issuance (§ 1.703(b)(1))
December 2, 2003	December 2, 2005	November 30, 2007	363 days

3. § 1.703(c)-(e)

There are no relevant dates as specified under §§ 1.703(c)-(e)

4. **Overlapping periods under § 1.703(a)-(e)**

Applicants have calculated overlapping periods in accordance with *Wyeth v. Dudas* (88 U.S.P.Q.2d 1538, D.D.C. 2008). Periods of delay under 35 U.S.C. §154(b)(1)(A) and 35 U.S.C. §1.54(b)(1)(B) overlap only if they occur on the same calendar day or days (*see Wyeth*).

There are no overlapping periods under § 1.703(a)-(e).

5. § 1.703(f)

The period of adjustment under 37 C.F.R. § 1.702(f) is as follows:

Type "A" delay:	392 days
Type "B" delay:	363 days
"A" and "B" overlap:	0 days
Applicant delay:	318 days
<u>Adjusted</u>	<u>437 days</u>

Reduction of Period of Adjustment of Patent Term Under 37 C.F.R. §1.704

The Office did not calculate the correct period of adjustment under § 1.704(a). The attached Patent Term Adjustment History (*see Exhibit A*) states that Applicant Delay is 422 days. The correct period of adjustment under § 1.704(a) is **318 days**, not 422 days for the reasons set forth below.

As described above under § 1.703(a), the Office incorrectly determined the 4-month deadline to be May 12, 2008, not August 28, 2008. Therefore, the Office further incorrectly allotted 87 days over the three month period allowed under § 1.704(b) for the Applicants' November 24, 2008 response to the August 28, 2008 Office Action.

Applicants respectfully submit that this is in error since (1) the August 28, 2008 Office

Action vacated the May 12, 2008 Office Action; (2) the November 24, 2008 response was less than three months from the August 28, 2008 mailing date; and (3) § 1.704(b) requires an Applicant reply period of greater than three months before accruing delay time.

Terminal disclaimer

The instant application is not subject to a terminal disclaimer.

PATENT TERM ADJUSTMENT DETERMINATION

Pursuant to *Wyeth*, Applicants are entitled to **437 days** of patent term adjustment, *i.e.*, [755 days (A delay + B delay)] minus [318 days (applicant delay)].

Based on the foregoing, Applicants respectfully request reconsideration of the patent term adjustment determination.

Please charge the fee set forth in 37 C.F.R. §1.18(e) (\$200.00) to Deposit Order Account No. 20-1430. Please charge any necessary additional fees or credit any overpayments to our Deposit Order Account No. 20-1430.

Respectfully submitted,



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